

ECONOMIC INCENTIVE AGREEMENT BETWEEN REINVESTMENT PARTNERS AND THE CITY OF DURHAM FOR NEIGHBORHOOD REVITALIZATION

THIS AGREEMENT is made and entered into this the ____ day of _____, 2014 (“Contract Date”) by and between Reinvestment Partners (the “Company”), a nonprofit corporation organized and existing under the laws of the State of North Carolina, and the City of Durham (the “City”), a North Carolina municipal corporation.

BACKGROUND.

(a) Section 2(f) of the Resolution Establishing an Economic Development Financial Assistance and Incentive Policy for Job Creation, Job Retention and Capital Investment, adopted by the City Council on April 21, 2014 (the “Resolution”), specifies that the City Council may appropriate economic development investment funds for certain neighborhood revitalization fund projects. In order to be eligible for an incentive payment under the “Neighborhood Revitalization Fund Program,” the Capital Investments must be made within the Community Development Area (CDA) (but outside the downtown development tier), Targeted Portions of the CDA or Targeted portions of the Urban Growth Area. Eligible improvements must be completed within one year after the Contract Date.

(b) Section 2(f)(i) of the Resolution further specifies that the incentive may be equal to fifty percent (50%) of the total capital investment made for a total incentive payment not to exceed \$500,000.00, comprising qualifying capital investments as defined by the Resolution.

(c) By authorizing the execution of this Agreement, the City Council of the City of Durham finds that in order to aid and encourage the revitalization and redevelopment in the Targeted Portions of the CDA and the CDA (but outside the downtown development tier), eligible areas within the City of Durham as identified by the Resolution, it is necessary and desirable to provide for the renovation of the building and property located at 902 North Magnum Street and that the proposed renovation will improve the economic conditions of the immediate area, increase taxable property in the City, and increase business prospects of the City.

(d) The quality of the proposed development meets the economic goals, the design control criteria as reflected in the Resolution, and the land-use goals of the City Council.

IT IS AGREED AS FOLLOWS:

1. Definitions.

(a) “Property” is the land and building(s) located at 902 North Mangum Street more precisely as Durham County Parcel Identification Number 0832-17-10-2363.

(b) “Capital Investments” are defined and identified in the Resolution under Section 3(b).

2. (a) Prerequisites to Payments. If the Company, in its discretion, makes expenditures that meet the definition of Capital Investments within one year after the Contract Date, the City shall make payments to the Company as provided in Section 2(b) (*Schedule of Payments*).

However, before the City shall be obligated to make any payments pursuant to Section 2(b), the Company shall have:

(i) (*Minimum Expenditures*) made Capital Investments to the Property by redeveloping a 4500 SF building into a food hub which supplies fresh local food at reasonable cost to low- access districts in Central and East Durham; and by expending at least \$208,000 in Capital Investments, which investments shall include, but not be limited to, site work, selective demolition, concrete and masonry work, metal work, façade work, doors, glass & glazing, drywall, flooring, painting, furnishing, fire protection, plumbing HVAC, and electrical work.

(ii)

(ii) (*Certificate of Compliance*), if required for the project(s), obtained from the Durham City-County Inspections Department a certificate of compliance (referred to below as “CO”) allowing occupancy or use, for office and/or commercial uses, of the area renovated to qualify under Section 2(a)(i) (*Minimum Expenditures*) above;

(iii) (*Accounting*) provided to the City a full and accurate accounting, with such detail as the City may reasonably require, of all expenditures comprising the Capital Investments; and

(iv) (*Certification*) delivered to the City a written certification, in such form as the City reasonably requires that the Company has satisfied all applicable requirements of Section 2 of this Agreement.

(b) *Schedule of Payments.* the City shall make payment of \$100,000.00 to the Company within 60 days after the Company has demonstrated compliance with all of the conditions in Section 2(a) (*Prerequisites to Payments*) as qualified by the effective Option.

(c) *Workforce Plan Conditions.* In addition to meeting the requirements described above under Sections 2(a) and (b), Company shall further comply with the following conditions in order to be eligible for the incentive payment:

(i) Contractor shall complete and return the document entitled “Durham Based Business Plan” (attached hereto as Attachment A which consists of 5 pages) upon execution of this Agreement and comply with its provisions during the term of this Agreement.

(ii) Contractor shall complete and return the document entitled “Workforce Development Plan” (attached hereto as Attachment B which consists of 7 pages) upon execution of this Agreement and comply with its provisions during the term of this Agreement.

3. *Delay of Payment.* If the City has reason to believe that any statement or certification made by the Company pursuant to this Agreement, including but not limited to Section 2 is not accurate, a payment otherwise appearing to be due shall be delayed for a reasonable time for a

determination of the facts, provided that the City shall send notice to the Company of the grounds for that belief.

4. *Time of Essence for All Dates and Deadlines; 18-Month Expiration.* *Time is of the essence for all dates and deadlines in this Agreement.* Notwithstanding any other provision contained in this Agreement, the City shall have no obligation to, and shall not make any payment to the Company pursuant to this Agreement on a date more than 24 months after the Contract Date.

5. *Addresses.* The payments by the City pursuant to this Agreement shall be mailed to:

_____ (*add address*)

or to such other address as the Company may specify by written notice to the City. When a notice is required or permitted by this Agreement, it shall be effected by written notice to the City by delivery to:

Director
Office of Economic & Workforce Development
City of Durham
101 City Hall Plaza, Durham NC 27701

and to the Company by delivery to:

Peter Skillern
Reinvestment Partners
110 E. Geer Street
Durham, NC 27701

_____ (*add address*)

Either party may change the address by giving notice of the change to the other party. Notice is deemed received (i) when it is handed to an employee of the other party located at the address stated in this section, or (ii) in case of mailing, on the third business day after it is deposited in a post-paid envelope in a post office or official depository under the exclusive care and custody of the United States Postal Service.

6. *EEO. Nondiscrimination.*

(a) *EEO Provisions.* For purposes of these EEO Provisions, the Company is the "Contractor." During the performance of this Contract the Contractor agrees as follows: (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin,

political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Contractor shall in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Contractor ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

(b) THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX, AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

7. Assignment. Without the City's written consent, the Grantee shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Grantee duties that arise out of this contract and all of the City's claims that arise out of this contract..

8. Modifications by Written Agreement; No Other Current Agreements; Waivers; Performance of Government Functions; References to Sections. This Agreement may be modified only by a written agreement executed by both parties hereto. Further, a modification is not enforceable against the City unless it is signed by the City Manager, a deputy or assistant City Manager, or, in limited circumstances, a City department director. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing. Nothing contained in this Agreement shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions. This Agreement is intended for the benefit of the City and the other party executing this Agreement and not any other person. Unless the context requires otherwise, references in this Agreement to Sections are references to Sections contained in this Agreement. Section titles, including references to Sections with their titles (as in "Section X(a)(i)(title of X(a)(i))", is for convenience only, and the titles are not

intended to affect the meaning of this Agreement.

9. Default. Termination. If the Company fails to fulfill any of its obligations under this Agreement, and fails to correct such failure within 30 days of receiving notice of such failure from the City, or if the Company makes any materially false statement in any statement or certification referred to in this Agreement, the City may hold the Company in default and (a) terminate this Agreement and make no further payments to Company and (b) recover all prior payments and reasonable direct expenses incurred by the City in connection with this Agreement, including reasonable attorney's fees.

10. Forum and Choice of Law. This Agreement shall be deemed made in Durham County, North Carolina. This Agreement shall be governed by and construed in accordance with the laws of North Carolina. The exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

11. Indemnification.

(a) To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (b) Definitions. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are interest and reasonable attorneys' fees assessed as part of any such item. "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor. (c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. (d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. (e) Limitations of the Contractor's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection "a" above shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

12. Agreement Subject to Resolution. This Agreement is made pursuant to the Resolution, and it is subject to the procedures, limitations, and restrictions set forth in the Resolution.

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13. City's Manager's Authority. To the extent, if any, the City has the power to suspend or terminate this contract or the Contractor's services under this contract, that power may be exercised by the City Manager or a deputy or assistant City Manager without City Council action.

IN WITNESS WHEREOF, the City and the Company have caused this Agreement to be executed under seal by their respective duly authorized officers.

ATTEST:

CITY OF DURHAM

By: _____
City Manager

preaudit certificate

COMPANY NAME

Secretary

By: _____
Executive Director Peter Skillern

(Affix corporate seal.)

State of _____ ACKNOWLEDGMENT BY Reinvestment Partners

County of _____

I, a notary public in and for the aforesaid county and state, certify that _____ personally appeared before this day and stated that she or he is the (~~strike through the inapplicable:~~) chairperson/ president/ chief executive officer/ vice-president/ assistant vice-president/ treasurer/ chief financial officer of Reinvestment Partners a(TYPE OF COR), and that by authority duly given and as the act of the corporation, he or she signed the foregoing contract with the City of Durham and the corporate seal was affixed thereto.

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This the _____ day of _____, 20____.

My commission expires:

Notary Public

ATTACHMENT A

Reinvestment Partners Project in NECD

Durham-Based Business Plan

Pursuant to that certain Contract between the City of Durham, a North Carolina municipal corporation (the "City") an a nonprofit corporation organized and existing under the laws of the State of North Carolina, and the City of Durham (the "City"), a North Carolina municipal corporation and registered to do business in the State of North Carolina, regarding funds for capital investments at 902 N. Magnum Street, identified more precisely as Durham County Parcel Identification Number 0832-17-10-2363 , effective as of _____ 2014(the "Contract"), Company has agreed to make certain capital investments in the City (the "Project").

Purpose/Goals

The purpose of this Durham-Based Business Plan (the "Plan") is to encourage the use of Durham-based firms in an OEWD database in connection with the Project. Through this process, Durham-based firm that may not have otherwise received consideration due to lack of exposure to the larger business community may have the opportunity to become involved in this Project in their community.

Administration

This Plan shall be administered by Company and the City and shall take effect when signed by the parties below and shall be fully effective until Completion Date (as defined in the Contract), including any extension or modification to such date. The Plan will implement the following guidelines and activities:

A. *Durham-Based Firm Identification Resources.* Company agrees to undertake the following:

- 1. Prior to the execution of the Contract, meet with the Director of the Office of Economic and Workforce Development or appropriate staff to establish project goals.**

Reinvestment Partners and the City through the Director of the Office of Economic and Workforce Development or such other authorized employee of the City will meet and mutually set specific goal(s) under the Plan for the Project (the "Goals"). The Goals for this Project shall be those Goals set forth in Section C of this Plan.

- 2. Use the City's database.**

Reinvestment Partners will review the list of Durham-based firms that are supplied by the City for those qualified and available to work on the Project.

3. Use of local organizations.

In the event a review of the City's database does not identify any Durham-based eligible to work on the Project, Company agrees to request from one or more of the offices listed below, as Company determines, the identity of any qualified Durham-based firms for work on the Project:

- Durham Business & Professional Chain
- NC Institute of Minority Economic Development, Inc. contractors and vendor listing
- RDU International Airport Authority Minority Database
- Small Business Administration (SBA) Minority Database
- North Carolina Department of Transportation (NCDOT) Database

B. Outreach. Company will solicit interest by Durham-based firms in the Project utilizing the following:

1. Provision of written notice to qualified Durham-based firms with the list supplied in the City database that could perform the work to be subcontracted.

Company will send invitations to bid to qualified Durham-based firms, as determined by Company, in the City database expressing the desire to receive a proposal from such Durham-based firms for scope of work in their respective areas of expertise. Company will provide to the City a complete listing of all qualified firms that received invitations to bid on the Project. Company will maintain documentation on any written requests made to Durham-based firms with regard to solicitation of work on the Project.

2. Timelines of notice to permit sufficient time for response of Durham-based firms.

In the event Company is able to provide the City with notice of upcoming projects, Company agrees to permit the City to notify Durham-based firms of those upcoming projects. These notifications may include a brief description of the project, potential subcontracting opportunities and anticipated solicitation dates. Some of the specific efforts the City may employ for notifying Durham-based firms include, but are not limited to, direct notification through phone calls or written notification through fax or email, and advertisements in local and statewide minority newspapers.

3. Pre-bid Meetings with Durham-based firms.

As commercially reasonable, Company will host pre-bid meetings in which qualified Durham-based firms will be invited to attend. When commercially reasonable and practicable, Company will provide two to three weeks after the prebid meetings and corresponding invitations to bid for the Durham-based firms to provide their proposals.

C. Procurement & Recruitment

With the understanding that firms must meet qualification requirements and that Company, its contractors and sub-contractors will have the intent and make good faith efforts toward ensuring equal contracting opportunities for Durham-based firms and the following contracting goal will be established for the Project:

- An aggregate of \$100,000.00 of capital expenditures will be completed or performed by enterprises

The aforementioned goal will be established for work including, but not limited to the following construction and hospitality trades:

- Asphalt work
- Site utilities
- Flooring painting
- Case work
- Saw cutting
- Landscaping
- Concrete
- Doors & framing
- Hardware
- Miscellaneous metals and steel erection
- Hotel maintenance

Company will employ the following efforts in order to recruit businesses:

- 1. Distribute lists of qualified Durham-based firms, as determined by Company, to prime bidders at the pre-bid meeting.**

Company will document any correspondence and information related to qualified Durham-based firms that has been provided to prime bidders. Company will maintain a visitor sign in log at the local office of the Construction Manager for all prime bidders and Durham-based firms who attend meetings related to the Project.

D. Technical Assistance

Company will provide technical assistance to Durham-based firms to aid them in the preparation of prequalification statements and proposals by:

- 1. Provide construction schedules with the bid packages to allow Durham-based firms to better understand their general conditions.**
- 2. Offer referral assistance to Durham-based firms by providing them with a list, when available of vendors, service providers and/or prime contractors.**

3. Provide assistance with prequalification forms.

Company will provide commercially reasonable assistance to Durham-based firms with prequalification forms.

E. Other Purchases

Company will involve Durham-based firms in the Project through:

- 1. Allowing qualified Durham-based firms to bid on the professional services, vendor and supplier and non-professional services aspects of the Project to the extent that such qualified Durham-based firms are able, in addition to the construction aspects of the Project.**

F. Monitoring and Reporting

Company will document the Plan's actual accomplishments by:

1. Analyzing and auditing majority trade contractors' bidding records to assure a minimum good faith effort. To the extent requested in writing by the City, Company will provide a letter certifying as to compliance of these actions within 10 business days of receipt of such written request.
2. Providing quarterly reporting. Reports shall be submitted by the 15th day of the month following the close of each quarter (January, April, July and October) and shall include a list of any Durham-based firms participating in the Project during the prior quarter, the category of each Durham-based firm, a description of the work completed by such Durham-based firm during the prior quarter and the amount paid to each Durham-based firm in the prior quarter.
3. Preparing and presenting a final report on the recruitment of Durham-based firms to work on the project.

Following the completion of the Project, Company will compile all quarterly reports previously provided to the City into one comprehensive Project Report and will deliver this to the City within 120 days following the completion of the Project.

[Signature Page Follows]

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CITY OF DURHAM

By: _____
City Manager

Date: _____

By: _____
Director, City of Durham Office of Economic and Workforce Development

Date: _____

Reinvestment Partners

By: _____

Date: _____

Attachment B

WORKFORCE DEVELOPMENT PLAN

This Workforce Development Plan (the “Plan”) is between the Durham JobLink Career Center, hereinafter referred to as JobLink, and Reinvestment Partners, hereinafter, referred to as BUSINESS. The Plan is being entered into in connection with that certain Contract between BUSINESS and the City of Durham Regarding Incentives for Neighborhood Revitalization In The Targeted Community Development Area, dated [June __, 2014] (the “Contract”). Defined terms used but not defined herein shall have the meanings ascribed thereto as provided in the Contract.

The purpose of this Plan is to enable the BUSINESS to utilize the JobLink as the primary source for recruitment and referral to maximize the placement of Durham residents for as many of the new jobs created by this project as practicable. The BUSINESS has no obligation to hire referred candidates from JobLink.

The intent of JobLink is to prepare Durham residents for the jobs made available by Durham and Triangle companies. Therefore, when public funds are invested into job growth projects, the City of Durham and County wish to maximize the number of Durham residents who obtain those jobs by working closely with the business to understand the job qualifications needed and to identify Durham residents in the JobLink system who match these qualifications.

JobLink’s goal is to have the BUSINESS value JobLink as a productive source of qualified candidates. It is the intent of JobLink to carefully screen individuals for the appropriate skill sets for prospective positions and to refer candidates that meet the knowledge, skills and abilities of those positions. It is also the intent of JobLink to carefully understand the goals and objectives of the business and to articulate those to the perspective employee to help ensure a good match.

JobLink services are provided to the BUSINESS on a prepaid basis by revenue generated through taxes.

I. GENERAL TERMS

- A. The BUSINESS will provide the Durham JobLink Center job descriptions via email for all positions that, if filled, would qualify as Qualified Jobs. BUSINESS will add Durham as a location identifier to their Website.
- B. JobLink will be used as the primary source to provide recruitment, referral and placement services to the BUSINESS subject to the limitations set out in this Plan. This agreement does not preclude the BUSINESS from using other sources to conduct recruitment, referral and placement activities.

- C. JobLink participation in this Plan will be carried out by the JobLink Manager, Business Services Manager and JobLink staff and contractors who are responsible for referral and placement of employees.
- D. This Plan shall take effect when signed by the parties below and shall be fully effective for the term in which BUSINESS has to create and fill the Qualified Jobs to qualify for the Qualified Jobs Incentive Payments as provided in the Contract, and any extensions or modifications to that period in the Contract.
- E. JobLink and BUSINESS agree that for purposes of this Plan, new hires and jobs created include all BUSINESS' job openings and vacancies in the County of Durham including those created as a result of internal promotions, terminations, and expansions of BUSINESS' workforce, as a result of this project.
- F. This Plan is made only in conjunction with the Contract and shall not be construed as an approval of any BUSINESS bid package, bond application, and lease agreement, zoning application, loan, incentive proposal or contract/subcontract.

II. RECRUITMENT

- A. JobLink will screen jobseekers according to the position qualifications as listed on the job descriptions as provided by the BUSINESS via email.
- B. JobLink will make every reasonable effort to implement cost-savings incentives such as work experience, on-the job training and relevant tax credits when relevant and appropriate to assist BUSINESS with recruiting efforts. Specifications and cost for such incentives will be mutually agreed upon by the BUSINESS and JobLink set forth in a separate agreement.
- C. Job openings to be filled by internal promotion from BUSINESS current workforce need not be referred to JobLink for referral and placement.

III. REFERRAL

- A. Once potential applicants are identified by JobLink, those individuals will be asked by JobLink to apply for positions through BUSINESS website. After applying for positions, applicants will provide confirmation of application to JobLink.
- B. Upon receipt of application confirmation, JobLink will provide names of applicants via email to BUSINESS and applicants will be considered referrals from JobLink.

IV. PLACEMENT

- A. JobLink will make every reasonable effort to refer qualified applicants for each job opening. JobLink shall attempt to place a percentage of the BUSINESS' openings commensurate with the number of applicants within the given occupational areas of the positions being recruited.
- B. BUSINESS has no obligation to hire the referred candidates but pledges to review all qualified resumes referred to BUSINESS by JobLink until such time either the position is filled, BUSINESS determines there are no qualified persons, there is no longer a need for the position, or the position need changes. If there is still a need for the position and if the position need has not changed, BUSINESS agrees to interview a reasonable number of JobLink referrals from email list if BUSINESS determines referrals are qualified for the position. This process is referred to as a "good faith" effort by BUSINESS.

V. AGREEMENT MODIFICATIONS

- A. If, during the term of this Agreement, BUSINESS should transfer possession of all or a portion of its business concerns affected by this Plan to any other party by lease, sale, assignment, merger, or otherwise, BUSINESS as a condition of transfer shall:
 - 1. Notify the party taking possession of the existence of BUSINESS'S contractual agreement concerning this Plan, and that full compliance with this Plan is required of the party taking possession.
 - 2. BUSINESS shall, additionally, advise JobLink within seven (7) business/calendar days of the transfer. This notice will include the name of the party taking possession and the name and telephone of that party's representative.

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Dated this _____ day of _____ 20 _____

Signature Durham JobLink Representative Signature of Business Representative

Printed Name of Durham JobLink Representative Printed Name of Business Representative

Name of Business

Address

Telephone

Email Address